

**MEMORANDUM OF UNDERSTANDING  
REGARDING TERMS AND CONDITIONS OF COUNTY  
PARTICIPATION IN  
COURT ORDERED DEBT COLLECTION PROGRAM**

**THIS AGREEMENT**, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003 is by and between the **CALIFORNIA FRANCHISE TAX BOARD (“FTB”)**, as an agency of the State of California, and the **COUNTY OF SAN BERNARDINO (“COUNTY”)** for the collection of certain court-ordered debts by the FTB.

**WHEREAS** Article 6 (commencing with section 19280) of Chapter 5 of Part 10.2 of the Revenue and Taxation Code authorizes FTB to undertake the collection of certain court-ordered debts owing to a county; and

**WHEREAS** a primary purpose of the enactment of Revenue and Taxation Code sections 19280 - 19283 was to enable counties to utilize FTB’s statewide resources and remedies to assist them in collecting certain unpaid court-ordered fines, forfeitures and penalties; and

**WHEREAS** FTB supported enactment of Revenue and Taxation Code sections 19280 - 19283 in order to generate increased revenue for the Victim Restitution Fund through more consistent collection of court-ordered fines, forfeitures, and penalties; and

**WHEREAS** the Legislature has declared that it is essential for fiscal purposes that this authorized program be expeditiously implemented; and

**WHEREAS** COUNTY has expressed its desire to participate in \_\_\_\_\_ this program;

**NOW, THEREFORE, FTB AND COUNTY**, in consideration of the mutual promises to perform respectively duties as described by statute and on terms and conditions set forth herein, hereby agree as follows:

**Section 1. PURPOSE**

FTB collects personal income and corporate franchise and income taxes. For the Secretary of State, FTB collects penalties from corporations that fail to file their annual statement of officers. In addition, FTB pursues debts owed to state and local government when they are referred by statute. Revenue and Taxation Code sections 19280 - 19283 provide authority for FTB to assist counties in the collection of unpaid court-ordered fines, forfeitures and penalties.

FTB is a proven successful debt collector. FTB collection efforts help protect the state and county fiscally, and benefit innocent victims of crime by enhancing the Victim’s Restitution Fund.

The state has increasingly expected counties to implement effective revenue collection in part to fund state-authorized programs. It is, therefore, in the mutual interest of the parties to use the

available resources of the state and county governments to collect unpaid court-ordered fines, forfeitures and penalties.

The parties to this agreement recognize the purposes of this program, and acknowledge the Legislature's finding that it is essential for fiscal purposes that this program be expeditiously implemented to achieve the Legislature's goal.

## **Section 2. TERM**

This agreement shall become effective upon its execution and continue for the term of the program or through such date as is agreed to in writing by both parties.

## **Section 3. ADMINISTRATION OF MEMORANDUM OF UNDERSTANDING - COUNTY**

**A.** COUNTY's Contract Administrator

**B.** The COUNTY's Contract Administrator shall be responsible for the record keeping of this Memorandum of Understanding, including keeping and updating all records relating thereto. The Contract Administrator may delegate others to perform Contract Administrator duties hereunder. The COUNTY's Contract Administrator shall have authority to make changes to the Memorandum of Understanding for collections of other fees due the court as authorized under Section 9.

**C.** COUNTY's Contract Administrator for this Memorandum of Understanding shall be the following person:

*Richard N. Larsen  
Treasurer Tax Collector  
172 West Third Street, First Floor  
San Bernardino, California 92415-0360*

## **Section 4. GENERAL AUTHORITY AND OPERATING PROVISIONS**

**A. Definitions:**

- (1) **"Delinquent Amount"** is the amount of court-ordered fine, state or local penalty, forfeiture, restitution fine, or restitution order, or combination thereof, which has not been paid 90 days after payment of the amount first becomes delinquent.
- (2) **"Account"** is a delinquent amount owed by a person or other entity which has been referred by COUNTY to FTB for collection.

- (3) **“Pro rata distribution”** means distribution based on a percentage equal to the face value of each included amount subject to referral divided by the total balance of the account.

**B. Amounts Subject To Referral:** Any delinquent fine, state or local penalty, forfeiture, restitution fine, or restitution order, or combination thereof, ordered as a result of a criminal offense, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, and imposed by a superior, municipal or justice court of the State of California upon a person or any entity, and which in aggregate, total \$250 or more per such person or entity is eligible for referral by COUNTY to FTB for collection. Accounts referred to FTB shall be treated as final and due and payable to the State of California.

**C. Interest Includible:** The amount referred by COUNTY may include any interest on the amount referred to FTB for collection which accrued prior to the date of referral.

**D. Collection Services:** Amounts referred shall be collected from the obligor by FTB in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy in the same manner provided for earnings withholding orders for taxes. FTB, in its sole discretion, will determine the appropriate enforcement remedies and/or services to be utilized for the collection of amounts referred under this agreement. To the extent authorized by Revenue and Taxation Code section 19280, subdivision (d)(2), any enforcement remedies and capabilities available to the court from which the amount was referred to FTB shall be available to FTB and shall apply without limitation to amounts referred under the provisions of Revenue and Taxation Code sections 19280 - 19283 and this agreement.

**E. Information To Be Made Available:** Any information provided to or secured by the Franchise Tax Board for purposes of administering the personal income tax or bank and corporation franchise and income tax laws, and any information, information sources and enforcement remedies and capacities available to the court from which the amount was referred shall be available to FTB for use in its collection effort

**F. Reporting:** FTB reported the results of the court imposed debt collection program to the Legislature on April 1, 2001. FTB may make such information available to interested parties and agencies for review and comment. FTB may disclose to the State Controller's office and the Board of Control, as administrator of the Victims of Crime Program, any data collected, including amounts by category of debt being referred for collection to FTB by County.

**G. Referral Criteria Guidelines:** COUNTY agrees to abide by referral criteria prescribed by FTB<sup>1</sup>.

## **Section 5. DISTRIBUTION OF RECOVERED AMOUNTS**

**A. Deposit In State Treasury:** All amounts collected by FTB for amounts owing on delinquent court-ordered debts shall be transmitted to the State Treasurer for deposit in a Court

Collection Account in the General Fund. Amounts collected pursuant to this program are amounts collected pursuant to a comprehensive collection program as provided in section 1463.007 of the Penal Code.

**B. State Controller Distribution:** The State Controller's office shall transfer to COUNTY, within 30 days from the payment on an account, amounts deposited in the Court Collection Account less an amount equal to the cost incurred by FTB for FTB's administrative costs of the program, but such amount deducted by FTB for administrative costs shall not exceed the maximum percentage authorized by Revenue and Tax Code Section 19282 of the amount collected.

After payment of the cost of administration, amounts shall be transferred to the court from which the account originated. The State Controller's office shall make transfers at least once each month. This agreement makes no provision for any such other direction of amount recovered. This provision shall not be construed to preclude or affect any contractual agreement by the State Controller and COUNTY regarding transfers, except as to the deduction for cost of administration.

San Bernardino County Central Collections shall design an administrative structure which provides for the transfer of collected revenue to the court.

**C. Partial Recovery - Pro Rata Distribution:** Subject to statutory priorities as described in item D, Multiple Debts of a Single Obligor, below, if an amount collected is not sufficient to satisfy the total amount of the account, then the amount collected shall be distributed on a pro rata basis as provided in section 19282, subdivisions (a) and (d).

**D. Multiple Debts Of A Single Obligor:** In the event a debtor has more than one debt being collected by FTB and the amount collected is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority (section 19533):

- (1) Payment of debts referred by counties for collection for delinquencies owing for child, spousal or family support.
- (2) Payment of any taxes, additions to tax, penalties, fees, or other amount due to FTB pursuant to the personal income tax or bank and corporation franchise or income taxes.
- (3) Payment of delinquent wages owed the state Department of Industrial Relations.
- (4) Payment of delinquencies collected under the state Department of Motor Vehicles delinquent registration program.
- (5) Payment of amounts referred by counties for collection for delinquencies in payment of court-ordered debt.

- (6) Payment of delinquent penalties owed the state Department of Industrial Relations.
- (7) Payment of delinquent fees owed the state Department of Industrial Relations.
- (8) Voluntary payments made by an obligated parent for a child support delinquency shall be applied solely to the child support delinquency for which the voluntary payment was made.

**E. Debts Collected And Credited In Error:** If COUNTY receives payment from the State Controller's office on accounts either collected in error, or by written checks drawn on checking accounts with insufficient funds, COUNTY shall owe a credit to the Court Collection Account in the state's General Fund equal to the amount of erroneous collection received by COUNTY or amounts transferred to COUNTY based on anticipated but unrealized collections from checking accounts with insufficient funds. In such an instance, FTB shall refund amounts deducted from collections to cover its costs of collecting such erroneous or unrealized collections.

**F. Amounts Referred Are Owing:** COUNTY shall refer only accounts the amounts of which are due and payable from the obligors. COUNTY warrants that any issues raised regarding the validity of the amount referred existing prior to referral were resolved by COUNTY prior to referral. COUNTY shall hold harmless the State of California and FTB, and shall indemnify them for any costs or liability imposed regarding collection activity undertaken on amounts referred which are not due and payable from the obligors.

## **Section 6. ADMINISTRATIVE REQUIREMENTS**

**A. Payments Deemed FTB Collections:** After the date an account is referred by COUNTY to FTB for collection, any and all payment on the account, regardless of where or by whom payment is made, shall be deemed debt collected by FTB pursuant to the court-ordered debt collection program, except payments collected through the Personal Income Tax refund intercept program, payments collected through liens filed by COUNTY or an agent for COUNTY prior to referral to FTB, and payment which COUNTY can show did not result from any FTB collection activity. FTB determination of such matters shall be conclusive and final.

**B. Three Year Collection Cycle:** FTB may work an account for up to three years after referral from COUNTY. COUNTY and FTB may agree to a different period on a case by case basis.

**C. County Collection Activity Suspended:** An account referred to FTB for collection shall not be actively pursued for collection by COUNTY or referred by COUNTY to any other agency or contractor for collection action.

**D. County To Resolve Disputes With Obligor:** An account referred to FTB is deemed final and due and payable in full. (See Section F, above.) Questions or disputes raised by an obligor with FTB regarding the accuracy of the amount, or whether the amount is owing, will be

referred to COUNTY. FTB collection activity may, in FTB's sole discretion, be suspended pending resolution of the issue.

**E. County Payment Plan On Account:** Accounts referred to FTB that are subject to pre-existing delinquent payment arrangements shall be subject to FTB collection action as though the entire amount is due in full, unless otherwise specified by the court order giving rise to the amount referred.

**F. FTB Payment Plan Not To Exceed One-Year:** FTB may decide, in its sole discretion, to enter a periodic payment schedule with the obligor. The terms of an FTB periodic payment plan agreed to with an obligor shall not exceed one year.

**G. FTB Weekly Report:** FTB shall provide COUNTY with an account payment update schedule not less than once each week. Weekly reports shall include a description of the collection activities (e.g., Issuance of Notice, Wage Garnishment, etc.) that have been applied to each case.

**H. Return Of Accounts:** FTB, in its sole discretion, may return any account which has been pursued for collection to the most practicable extent. A county also may request the return of accounts on a case by case basis. FTB shall receive cost of collection credit for amounts paid within one year of the return of an account, subject to the provisions of section 6, item A, above, relating to payments deemed FTB collections.

**I. Court-Ordered Changes In Amounts Of Referred Accounts:** FTB and COUNTY agree that changes to the amount and type of fees and fines imposed on a defendant, which result from a judicial review of the case should be communicated to FTB. A mechanism for the transfer of information and the alteration of the amount due will be developed by FTB and COUNTY.

**J. Proration Of Multiple Accounts For A Single Defendant:** If an amount collected is not sufficient to satisfy the total amount of all the accounts referred to FTB from COUNTY, for a single defendant, then the amount collected shall be distributed on a prorata basis as defined in Section 4, paragraph A.3., above.

## **Section 7. TERMINATION OR WITHDRAWAL**

**A. The Program Is Voluntary:** COUNTY's participation in the program is voluntary. COUNTY may effect withdrawal from the program by submitting in writing a statement of withdrawal to FTB, Debt Collection Unit. FTB is entitled to the cost of collection credit for amounts collected on any and all accounts. For a period of six months following a county's withdrawal, the FTB may continue collection activity on any account. This agreement may be terminated by mutual agreement, or by FTB pursuant to budget, fiscal or staffing considerations or by administrative directive.

## **Section 8. DATA REQUIREMENTS**

**A. Account Profile Elements:** Account profile elements will be submitted to the FTB at the time of referral and updated periodically. The element shall include the information as specified in Attachment A, in a format agreed to by the parties. The account profile information is to be used to manage the collection account.

**B. Debt Referral Categories Profile Elements:** COUNTY shall include a profile of each category of debt submitted. The profile shall include the following:

(1) Explanation of the type of offenses in each general category of offense that creates the obligation owing, and the applicable code sections governing allocation of fines, forfeitures, and penalty for that category. For example, the categories of the Uniform Bail Schedule adopted by the Judicial Council or the Department of Justice crime reporting classifications.

(2) Representative estimates of distribution by category of percentages allocated to various state and local agency or funds for each dollar collected on that category of account.

(3) Average outstanding balance at time of referral for an account in each category.

(4) Estimated percentage of accounts in each category for which a payment to the state Victim's Restitution Fund was originally owing, and an estimate average amount of such debt per account at time of referral.

**C. Forms:** Accounts will be submitted to the FTB in the form outlined in Attachment B, and in a format agreed to by the parties.

**D. Monthly County Updates:** New accounts may be submitted to FTB monthly. Twice each month, on or before the 15th and last day of the month, COUNTY will provide FTB with payment updates on accounts referred.

## **Section 9. SPECIAL TERMS AND CONDITIONS**

**A. Use Of Private Collection Agencies:** If FTB, in the course of collecting accounts for COUNTY, deems it necessary to sub-contract with a private collection agency, FTB shall provide COUNTY written notice of its intent to refer accounts to a private collection agency. FTB's notice shall identify those accounts which it intends to refer to a private collection agency and shall specify the private collection agency or agencies with which FTB intends to contract. COUNTY shall have 30 days from the date of its actual receipt of FTB's notice of intent to sub-contract in which to respond by indicating its consent or objection to the intended sub-contractor. If COUNTY objects to the intended sub-contractor in whole, FTB shall not refer COUNTY accounts to a private collection agency. If COUNTY objects to the referral of certain accounts to private collection agency, FTB shall not refer those accounts to a private collection agency. If COUNTY objects to referral of COUNTY accounts to certain private collection agency or agencies, FTB shall not refer COUNTY accounts to such agency or agencies.

**B. Determination Of Type Of Accounts For Referral:** Each participating county shall determine the types of accounts that they will refer to the FTB.

**C. Amendments To The Memorandum Of Understanding:** Amendments to this Memorandum of Understanding shall be executed by authorized personnel of the parties upon the agreement of COUNTY and FTB.

**D. Expanded Referrals:** If during the term of this Agreement, statutory authority is extended to FTB to collect other fees due the Courts not expressly specified in the present Agreement, the parties, by mutual consent, may amend said agreement to include the collection of those fees and the Contract Administrator, as previously defined, is expressly extended such authority to enter into such amendment. Except as so authorized, no changes to this Agreement shall be valid and affected unless made in the form of a written amendment approved in writing and formally executed by authorized officials of COUNTY and FTB.

## **Section 10. AUDIT PROVISIONS**

**A. Audit By County:** FTB agrees that those matters connected with the performance of any work done under this Agreement pursuant to this Agreement, including, but not limited to, the costs of administering the Agreement may be subject to the examination and audit of the COUNTY, or its authorized representative, for a period of three (3) years after final payment is made under this Agreement.

**B. Audit Report:** In the event an audit is conducted of FTB specifically as to this Agreement by any Federal or State auditor, or by any auditor or accountant employed by the FTB or otherwise specifically regarding this Agreement, then FTB shall file a copy of such audit report with COUNTY's Auditor-Controller within thirty (30) days of FTB's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. COUNTY shall maintain the confidentiality of such audit report(s).

**C. Contingency Clause To Budget Act:** The attached "Contingency Clause to Budget Act" is hereby incorporated as Attachment C and made part of this Agreement.

**D. Cancellation Of Agreement:** This Agreement may be canceled by either party upon thirty (30) days prior written notice.

IN WITNESS HEREOF, the Board of Supervisors of the COUNTY OF SAN BERNARDINO has caused this Memorandum of Understanding to be subscribed by its Chair and the seal of said Board to be hereto affixed and attested by its Executive Officer and the Franchise Tax Board has caused this Agreement to be signed by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

FRANCHISE TAX BOARD  
STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO



By: \_\_\_\_\_  
\_\_\_\_\_

Chair  
BOARD OF SUPERVISORS

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
County Counsel

Clerk of the Board of Supervisors